

EDWARD W. PILOT, A PROFESSIONAL CORPORATION  
EDWARD W. PILOT, ESQ. (SBN 136812)  
9107 Wilshire Blvd. No. 700  
Beverly Hills, CA 90210  
TEL: (310) 274-9602  
FAX: (310) 274-7749  
E-MAIL: edpilotlaw@gmail.com

Attorney For Defendant Barry Mendelson, an individual and  
Defendant DOE 1 Mendelson Entertainment Group, LLC,  
incorrectly sued as Mendelson Entertainment Inc.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

OKSANA BAIUL-FARINA,  
professionally known as  
OKSANA BAIUL, an individual,  
and OKSANA, LTD,  
a Pennsylvania Corporation

## Plaintiffs

vs.

NBC SPORTS, a division of NBC  
UNIVERSAL MEDIA LLC, a  
Delaware limited liability company;  
ON ICE, INC., a California corporation;  
BARRY MENDELSON, an individual;  
DOES 1-10

## Defendants.

Case No. 2:15-CV-05163-DDP-MRW

Defendant Barry Mendelson's and  
Defendant Doe 1 Mendelson  
Entertainment Group LLC's  
Supplemental Memorandum Of Points  
And Authorities In Support Of Motion  
To Dismiss Plaintiff's Second Amended  
Complaint For Failure To State A Claim

[Pursuant to Fed. R. Civ. P. 12(b)(6)]

*[Submitted Concurrently With  
Notice of: Joinder; and Filing  
Supplemental Memorandum of Points  
and Authorities; Proposed Order]*

Date: April 11, 2016  
Time: 10:00 a.m.  
Location: Courtroom 3

Removed: July 8, 2015  
Trial Date: None Set

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**TABLE OF CONTENTS**  
3

4	1.	<u>Plaintiff's Lawsuit Should Be Dismissed With Prejudice</u>	1
5		<u>As To Mendelson and MEG.</u>	
6	2.	<u>Plaintiff's New Cause of Action for Breach of Implied in Fact</u>	
7		<u>Contract Contradicts Her Other Factual Allegations.</u>	3
8	3.	<u>Plaintiff Is Deceptive And Disingenuous In Her Pleading.</u>	4
9	4.	<u>Summary</u>	5
10	5.	<u>Conclusion</u>	5

## **TABLE OF AUTHORITIES**

<u>Cases</u>	<u>Pages</u>
<u>Allen v. McCurry</u> (1980) 449 US 90, 99-101, 101 S. Ct. 411, 417-418	3
<u>Caterpillar Inc. v. Williams</u> , 482 U.S. 386, 392 (1987)	2
<u>Hamilton v. Asbestos Corp.</u> (2000) 22 Cal.4th 1127, 1146, 95 Cal.Rptr.2d 701	3
<u>Peduto v City of North Wildwood</u> , (1989) 878 F. 2d 725, 727	4
<u>Simmons v. Cal. Institute of Technology</u> (1949) 34 Cal.2d 264, 272	5
<u>Wulfjen v. Dolton</u> (1944) 24 Cal.2d 891, 894-895, 151 P. 2d 846	4
<u>Statutes</u>	
Cal. Civil Code §§ 1549, 1550(2)	3
Cal. Civil Code § 1621	4
8 U.S.C. § 1324a et seq.	2

**SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES**

In addition to joining in NBC Unviersal's ("NBC") Motion to Dismiss and its Request for Judicial Notice, Defendant Mendelson and Doe 1 Mendelson Entertainment Group, LLC ("MEG") make the following additional arguments.

**1. Plaintiff's Lawsuit Should Be Dismissed With Prejudice As To Mendelson and MEG.**

Plaintiff has abused the judicial process from coast to coast. This lawsuit is her third attempt in this particular California litigation which follows on the heels of her unsuccessful litigation on the same primary right in the New York State and Federal Courts.<sup>1</sup> Among the myriad lawsuits that Baiul has filed in recent years - all of which have been dismissed - she previously filed a lawsuit against more than 20 individuals and entities arising from substantially similar allegations to those here. This Court found that suit to be frivolous and wholly without merit. It granted defendants' motion to dismiss on statute of limitations grounds. See Baiul v. William Morris Agency, LLC No. 13 Civ. 8683(KBF), 2014 WL 1804526 (S.D.N.Y. May 6, 2014), aff'd 601 F. App'x 58 (2d Cir. 2015) (summary order).

Baiul also previously brought two related actions against NBC (among others) arising out of alleged commercial uses of Baiul's name and likeness relating to the same skating shows at issue here. This Court granted defendants' motion for summary judgment on those claims and awarded attorneys' fees to defendants. See Baiul v. NBCUniversal Media LLC Nos. 13 Civ. 2205 (KBF), 13

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<sup>1</sup> Mendelson and MEG adopt NBC's recitation of the history of these related lawsuits.

1 Civ. 2208(KBF), 2014 WL 1651943 (S.D.N.Y. Apr. 24, 2014), aff'd 607 F.  
 2 App'x 99 (2d Cir. 2015) (summary order). [Katherine B. Forrest, United States  
 3 District Judge's September 16, 2015 Memorandum of Decision, 15-cv-2816  
 4 (KBF) at page 1]

5 Plaintiff Baiul escaped dismissal with prejudice in New York because the  
 6 cause of action which she had alleged in the New York Supreme Court, which  
 7 was the basis for the removal to the Federal District Court for Southern District of  
 8 New York, was so meritless that it failed to state a cause of action. Hence, it  
 9 would not support removal. Plaintiff had tried to allege violation of the  
 10 Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324a et seq.

11 As Judge Forrest noted, only a well pled cause of action will support  
 12 removal, citing Caterpillar Inc. v. Williams, 482 U.S. 386, 392 (1987) [*Forrest*  
 13 *Decision* at pages 7, 9] Baiul's cause of action for violation of the Immigration  
 14 Reform and Control Act of 1986 [*Forrest Decision* at page 3] failed to state any  
 15 cause of action, leaving the federal district court without jurisdiction to dismiss  
 16 the complaint with prejudice.

17 Plaintiff's Baiul had had her prior actions based upon the same primary  
 18 right dismissed as frivolous in one instance and dismissed on summary judgment  
 19 in another instance. [*Forrest Decision* at page 1] In the New York District Court,  
 20 Baiul was on her Third Amended Complaint, and in this court, she is on her  
 21 Second Amended Complaint. Baiul's new causes of action in the Second  
 22 Amended Complaint in this court is as defective as her IRCA cause of action was  
 23 in New York. [See *infra* and NBC's Motion to Dismiss]. Thus, in addition to the  
 24 prior lawsuits which the courts dismissed, Baiul is actually on her 7<sup>th</sup> Amended  
 25 Complaint. This lawsuit was filed in California after she had dismissed without

1 prejudice her lawsuit in the New York State Court. Thus, adding together those  
 2 amended complaints to the ones in California, we have seven attempts.

3 **2. Plaintiff's New Cause of Action for Breach of Implied in Fact Contract**

4 **Contradicts Her Other Factual Allegations**

5 Plaintiff attempts to make the factual allegation that she only recently  
 6 learned that she had a deal with defendants to be paid, but her implied-in-fact  
 7 contract is factually inconsistent with her claim of recent discovery. [SAC 5:11-  
 8 6:3] If there had been an implied-in-fact contract in 1993 or 1994, then Plaintiff  
 9 had to know about it. An implied-in-fact contract is a factual pleading of  
 10 Plaintiff's knowledge. Without knowledge, there could be no contract as there  
 11 could be no mutual assent.<sup>2</sup> Cal. Civil Code, §§ 1549, 1550(2)

12 The Implied-in-Fact Contract is barred for another reason. Plaintiff's new  
 13 facts are not facts, but merely a theory of recovery. There are not any new facts  
 14 which were concealed from her. Each of these theories has been rejected by the  
 15 courts and each theory is based on the same primary right.

16 The series of lawsuits by Plaintiff's attorneys show a conscious disregard  
 17 for proper pleading. Plaintiff's primary right has already been litigated and the  
 18 outcome has been against her. Allen v. McCurry (1980) 449 US 90, 99-101, 101  
 19 S.Ct. (1980) 411, 417-481, Hamilton v. Asbestos Corp. (2000) 22 Cal.4th 1127,  
 20 1146, 95 Cal.Rptr.2d 701.<sup>3</sup> She may not now bring a new action based on the

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22 <sup>2</sup> The allegation that she entered into an implied-in-fact contract by fraud and  
 23 mistake is legal gibberish. [SAC 5:16-27]

24 <sup>3</sup> When state courts fail to provide a full and fair hearing, there may be an

1 same Primary Right against anyone.<sup>4</sup>

2 **3. Plaintiff Is Deceptive And Disingenuous In Her Pleadings**

3  
4 After multiple courts and at least seven renditions of her claim, Plaintiff  
5 still cries that she was a poor minor without any protection. When Plaintiff  
6 presents the mixed claims that she was a minor (FAC 4:8, SAC 3:13), which  
7 would delay the date of majority for her to file a lawsuit in her own name, plus  
8 delayed discovery, Plaintiff has a duty to be forthwith with the court about all the  
9 relevant dates and other facts. As NBC points out its Motion to Dismiss, Plaintiff  
10 has failed to plead the necessary facts. *NBC's Motion to Dismiss* at pages 11-12.  
11 Thus, Mendelson and MEG will only discuss the failure to be forthright about her  
12 age.

13 By alleging an implied-in-fact contract (Cal. Civil Code, § 1621), Plaintiff  
14 is factually admitting that she knew about the alleged contract in 1994. Inherent  
15 in the concept of a contract is mutual assent and mutual assent requires  
16 knowledge. Thus, by alleging an implied-in-fact contract for payment for her

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17  
18 exception to allow litigation in federal court, but Plaintiff has failed to make any  
19 such allegations against the California state courts. Peduto v City of Northwood,  
20 (1989) 878 F.2d 725, 727.

21 <sup>4</sup> When a plaintiff sues, she has to assert all causes of action or lose the causes of  
22 action which she omits. This rule is called the rule against splitting cause of  
23 action. The California courts have a policy to prevent defendants from being  
24 subjected to the same matter over & over because a plaintiff decides to assert her  
25 causes of action in a serial manner. Wulfjen v. Dolton (1944) 24 Cal.2d 891,894-

1 1994 Performance, she knew in 1994. The contract could not come into existence  
2 after she had performed as past consideration is no consideration. Simmons v.  
3 Cal. Institute of Technology (1949) 34 Cal.2d 264, 272

4 Because Plaintiff fails to allege her birth date, the parties and the court are  
5 forced to use common knowledge and reason to determine that her statute of  
6 limitation ran years ago. As an Olympic gold medalist, Plaintiff was no less than  
7 13 years old in 1994 in order to star in the Nutcracker, which means she had to  
8 have reached her majority by 1999. The longest statute of limitations is three  
9 years, which means she had until 2002 to bring her claims.

10 **4. Summary**

11 Plaintiff Baiul has had her day in court – again and again and again. Just as  
12 she dredges up inappropriate causes action, she had added inappropriate  
13 defendants, Mendelson and MEG.  
14

15 **5. Conclusion**

16 Defendants Mendelson and MEG respectfully request that this Court  
17 dismiss **with prejudice** the complaint against Mendelson and MEG. Defendants  
18 also request that this Court not accept another voluntary dismissal from Plaintiff.  
19 If she should try that ploy again, Defendants request that the court reject it and  
20 instead dismiss the case **with prejudice**.

21 Dated: March 3, 2016

Edward W. Pilot, APC

22 By:/s/ Edward W. Pilot

23 Edward W. Pilot, Esq.

24 Attorney for Defendant Barry Mendelson, an  
individual and Defendant DOE 1 Mendelson  
Entertainment Group, LLC, incorrectly sued  
as Mendelson Entertainment Inc.